

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2709 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HAMIDBhai J BALOSHPURA

Versus

DIVISION CONTROLLER

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Appearance:

MR JV JAPEE for Petitioner

MR YS LAKHANI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/06/96

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ORAL JUDGEMENT

1. Rule. Mr. Y.S. Lakhani waives service of rule on behalf of respondent. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.
2. The petitioner who has been serving as a driver with the Gujarat State Road Transport Corporation is dismissed from service on the stated misconduct of being

not on duty without prior permission or notice for a short period. He was transferred from Palanpur Division Tharad Depot to Vijapur Depot in Mehsana Division on 14th of February, 1994. Due to his sickness though he joined duty, he was not present on duty or left duty on 21st of February, 1994. He thereafter appeared for resumption of duty and submitted the report for resumption of duty along with a certificate of doctor on 3rd of March, 1994. At the most, therefore, even if the allegations made against the employee are accepted, he was stated to be absent from duty without prior notice from 21st February, 1994 to 3rd March, 1994 i.e. for ten days. It is stated that he thereafter misbehaved with the A.T.I. and did not produce any certificate and therefore departmental enquiry was initiated against him and ultimately an order of dismissal is passed for the aforesaid misconduct of remaining absent from duty for a period of ten days.

3. The petitioner undoubtedly challenged earlier proceeding by resorting to a Reference to the Labour Court as well as by filing a suit as he has been out of job since February 1994. However, he withdrew the proceeding which course of action appears to be permissible as per the judgment of His Lordship Justice M.P. Thakkar of this Court (as His Lordship then was). Thereafter, the order of dismissal is passed which is yet not served on the petitioner and the present petition is filed. Looking to the allegations made against the petitioner and in light of the facts that his Service Record as Driver is in every respect otherwise is satisfactory and nothing adverse is found against him, and the economic death penalty of dismissal from service for absence from duty for a period of 10 days is a draconian penalty and only autocratic body can impose such penalty. No reasonable man worth the name can tolerate such punishment. The punishment is too harsh, excessive, unreasonable and violative of Article 14 of the Constitution of India. The same is liable to be set aside and is hereby quashed and set aside.

4. However, in view of the fact that there is some misconduct committed by the employee, he may not be encouraged to continue such misconduct in future, some penalty shall have to be imposed. The parties have left the matter to the discretion of the Court. In the facts and circumstances of the case, the penalty of dismissal is substituted by a penalty of stoppage of 2 (two) increments without future effect and the respondents are directed to reinstate the petitioner in service with payment of 80% (eighty percent) back wages. It is directed that petitioner shall be treated as in duty

continuously without any break in service. The rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

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